

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NATHAN A.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Case No. 2010090046

DECISION

Mark Harman, Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH), heard this matter in Alhambra, California, on February 28, 2011.

Nathan A. (Claimant) was represented by his mother (Mother).¹

Lee Strollo, Family Services Unit Supervisor, represented the Eastern Los Angeles Regional Center (the Service Agency or ELARC).

Oral and documentary evidence was received, and the matter was submitted for decision at the conclusion of the hearing.

ISSUE

Whether the Service Agency shall continue to fund parent-vendored day care services (up to 175 hours per month).

¹ Initials and familial titles have been used to protect the privacy of Claimant and his family.

FACTUAL FINDINGS

1. Claimant is a seven-year-old Service Agency consumer with a diagnosis of Autistic Disorder. His parents were divorced in March 2009 and live in separate residences. Claimant lives with Mother, his twin sister, and his one-year-old half-brother, except when Claimant has overnight visits with his father every other weekend. While Mother is at work, Claimant is in school, involved in afterschool activities (including sports and various therapies), or being cared for by his maternal grandmother (Grandmother). This care generally is provided five days per week and on alternating Saturdays in Grandmother's home. The Service Agency funds the services provided by Grandmother up to 175 hours (or \$1,358) per month.

2. In July 2010, the Service Agency notified Mother "that day care services provided by Day Care Family Member will be terminated effective [November 1, 2010]. [¶] ELARC is hereby providing you with written notice that the Regional Center is denying your request for 35 hours of Day Care (Family Member) Services."² Mother filed a fair hearing request on August 4, 2010, and this proceeding ensued. The Service Agency has continued to fund the Day Care Family Member services as "aid paid pending" a decision in this matter.

3. Claimant attends a special day class at Murphy Ranch Elementary School, except for one-half hour per day, when he goes into a regular classroom for the mathematics lesson, one of Claimant's particular strengths. Claimant is quite verbal, although it may be challenging for others to understand him. Claimant receives speech and language therapy every day at school. Claimant receives individual speech therapy for one hour, three times per week, in Grandmother's home, which is privately funded by his parents.

4. Claimant has challenges interacting with his peers, with whom he can become rough; however, he shows interest in other people. He is able to follow multi-step directions without requiring repetition. (Exhibit I.) The evidence did not make clear whether Claimant engages in tantruming, or whether it is frequent or intense. He has difficulties transitioning between activities. He may cry when he does not get his way, or throw himself to the floor, or hide in his room. Mother reported that Claimant bangs his head to get an adult's attention, but he usually is able to recover from distress within 20 minutes.

5. The Service Agency is funding the Social-Emotional Developmental Intervention Program (SEDI) provided by Pasadena Child Development Associates (PCDA), for 1.5 hours per week, on Tuesdays from 2:30 to 4:00 p.m. This is a one-on-one service between a therapist and Claimant in Grandmother's home. The SEDI goals include helping Claimant to: "[1] engage in parallel play activities . . . [2] recover from distress within 20

² On July 16, 2010, the Service Agency sent a letter to each consumer receiving day care services, stating that the Service Agency would be reviewing their eligibility for these services under its purchase of service guidelines. Mother maintains she did not receive this letter.

minutes while co-regulating with a familiar and trusted adult, while remaining involved in a reciprocal social interaction . . . [and 3] sustain an interaction through the ups and downs of a problem-solving interaction” to solve a common goal. Mother and Claimant’s twin sister are involved and actively participate in each of these sessions. At the end of these sessions, Claimant’s father stops by and briefly joins in. (Exhibit K.)

6. Mother works as an administrator at a beauty salon located approximately five minutes from the family home, Monday through Friday, from 12:30 p.m. to 9:30 p.m., and every other Saturday from 9:30 a.m. to 5:30 p.m. Mother picks Claimant up from school at 2:00 p.m. and drops him off at Grandmother’s house before she goes back to work. The Service Agency is funding 35 hours per week for Grandmother ostensibly to care for Claimant in her house after school. Claimant, however, has after school activities on several days of the week which involve Mother and his father. On Tuesdays and Fridays, Claimant stays after school and is joined by his father there. For example, his father has signed Claimant up for soccer and baseball leagues, and encourages Claimant while he participates at soccer and baseball practices and games, both after school and on weekends. Mother said Claimant “does okay” with his father’s “continuous support.” As set forth above, Claimant receives various therapies after school, including speech and language therapy and SEDI. Mother participates in these sessions.

7. Mother offered no corroborating evidence that her family needs funding for 35 hours per week of day care services. Mother often is with Claimant when he is not in school, whether she is picking him up from school, taking him to an activity, or participating with him in a therapy. Mother maintains she does this on her “lunch hour,” but she apparently has flexible work hours. Father also is available to provide support when Mother is working. Mother’s suggestion that Grandmother has a singular ability to “control” Claimant also was not supported by the record. At school, Claimant can function without a one-to-one aide, which suggests he is able to respond to his teachers. After school, he participates in social recreational activities with the support of his father. Claimant receives therapies while in Grandmother’s home without Grandmother’s support.

8. Ultimately, Mother does not dispute that Claimant is able to attend a generic day care facility; however, the day care provider may require that Claimant be provided additional support, such as an aide for him. The Service Agency’s service coordinator provided to Mother information about several day care providers. Mother testified that she placed Claimant on the waiting lists of some low-cost child care providers. She maintained that these providers will not accept Claimant without an aide, but she presented no documentary evidence to corroborate her statements. Mother seems resistant to placing Claimant in any day care that will not accept him without the support of an aide. Mother somehow has inferred, incorrectly, that the Service Agency’s policies require Mother to privately pay for his aide in a generic day care setting. The Service Agency, however, is willing to “consider funding for the support service or day care aide that would assist and enable” Claimant to attend a generic day care setting, but it does not agree to fund the cost of day care services, themselves. (Exhibit F.) In sum, generic

resources are available to provide day care for Claimant, if Claimant has an aide, but Mother has not actively pursued this option.³ Neither the cost of these generic day care services, nor the cost to provide the services of an aide during the day care, was established by the evidence.

9. The Service Agency funds 24 hours per month of in-home respite, an amount that is paid to Grandmother to give Mother a break from caring for Claimant. The In-Home Supportive Services program also pays Grandmother approximately \$200 per month to provide care for Claimant. Mother receives \$450 per month in child support from Claimant's father, and \$350 per month in SSI benefits for Claimant. Mother's income from work purportedly is between \$1,200 and \$1,500 per month. These funds may be used to pay for day care services. Mother offered no documentation regarding her financial situation.

10. Claimant has not shown that terminating funding for day care services will cause a financial hardship for his family, or will prevent him from remaining in the family home.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (the Lanterman Act), Welfare and Institutions Code⁴ section 4500 et seq., the State accepted responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

2. The Lanterman Act gives regional centers, such as the Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

3. Section 4512, subdivision (b), defines the kinds of services and supports that may be funded. It sets forth a collaborative process involving the consumer (or his family) and service agency representatives for identifying the appropriate services and supports directed

³ Mother purportedly has another concern. She reported that the YMCA in Whittier does not consider Claimant's family to be "low income," and therefore, it would charge her \$474 per week (approximately \$1,800 per month) to provide child care services for Claimant. This charge purportedly would not include the cost of an aide. Mother has not established that the YMCA in Whittier charges this amount to provide day care services.

⁴ All further statutory references are to the Welfare and Institutions Code, unless specified otherwise.

“toward alleviation of a developmental disability, or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” Services and supports may include day care. (*Ibid.*)

4. Where a change in services is sought, the party seeking the change has the burden of proving that the change is necessary to meet the consumer’s needs or that the consumer is no longer entitled to the services. (See Evid. Code, §§ 115 and 500.) The Service Agency has funded “day care, family member” services up to a maximum of 175 hours per month for Claimant. This service has continued unabated to the present. The Service Agency, therefore, has the burden to establish that Claimant is no longer entitled to these services.

5. In its Notice of Proposed Action, the Service Agency referenced section 4685, subdivision (c)(6), which provides:

“When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.”

6. Section 4646.4 provides:

“(a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer’s individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

“(1) Conformance with the regional center’s purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

“(2) Utilization of generic services and supports when appropriate.

“(3) Utilization of other services and sources of funding as contained in Section 4659.

“(4) Consideration of the family’s responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer’s service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer’s need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

“(b) Final decisions regarding the consumer’s individual program plan shall be made pursuant to Section 4646.”

7. The Service Agency is not authorized to fund the cost of day care services unless Claimant’s family has demonstrated that Claimant requires specialized care that exceeds what is provided to a child without a disability. When specialized care is needed, the Service Agency may pay only the costs of the specialized services or additional supervision required in the day care. Thus, a family who is caring for a child with disabilities generally must expect that they will be required to pay for regular after school day care programs, just as any parent of a child who did not have a disability.

8. Under the exception to this general rule, Claimant would need to demonstrate that the cost of day care services was a financial hardship for his family and, without assistance, Claimant would be unable to remain in the family home. Claimant has not demonstrated this. ELARC is willing to consider funding the support services or a day care aide that may be necessary to assist and enable Claimant to attend a generic day care setting, which is all that the law requires. The Service Agency does not agree to fund the cost of the day care services. By reason of the foregoing, the Service Agency’s determination to discontinue funding for parent-vendored day care services is supported by the facts and law.

ORDER

Claimant’s appeal is denied. The Service Agency may discontinue funding parent-vendored day care services provided for Claimant.

Dated: June 1, 2011

Mark Harman
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.